IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 984 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYESHKUMAR HIRALAL CHOKSI - Applicant(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

NOTICE UNSERVED for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
MR ADIL MEHTA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 13/10/2005

ORAL JUDGMENT

1.The petitioner has filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the investigation carried out by the

respondent no.2 on the basis of the order below the complaint being Criminal Case No.21/1989 pending in the court of JMFC, Surat. The said petition was filed though his advocate, who is later on elevated to the Bench of this Court. The petition was admitted and interim relief was granted. Subsequently fresh notice was issued by this court to the petitioner. However, the said notice remained unserved. The report was filed before this court from the Sessions Court, Vadodara wherein it was stated that the petitioner is not staying at the address given in the petition. Police authorities have recorded the statement of petitioner's mother, wherein she has stated that the petitioner is not staying with her since 1991. she is not aware about the petitioner. The notice therefore remained unserved till this date. It appears that the petitioner is not interested in proceeding this matter otherwise he would have inquired about this matter.

2.However, in the interest of justice, this court has passed an order on 28.09.2005 directing the office to issue the notice to the petitioner at the address of M.S. University, Vadodara as in the petition it was stated that he was lecturer in M.S. University, Vadodara. The

notice was made returnable today. i.e. 13.10.2005. The court has also directed the office to inquire in the court of learned JMFC, Surat where the Criminal Case no. 21/1989 is pending and call for the report from the concerned court as to whether the petitioner who is the accused in that case ever remains present on the date of hearing of the complaint.

3.Though the court has passed the order on 28.09.2005, it appears that the office has issued the notice on 06.10.2005. Office has not placed anything on record as to whether it has inquired from the Court of Learned JMFC, Surat with regard to the pendency of the Criminal Case no. 21/1989 and the whereabouts of the petitioner. It appears that the office is not complying with the direction issued by this court and hence the concerned person is hereby directed to give his explanation as to why the direction issued by this court has not been complied with.

4.Since the complaint is of the year 1989 and the present petition is filed in the year 1991, twice the efforts were made to serve the petitioner. However, the petitioner's whereabouts are not known and therefore, it

appears that the petitioner is not interested in pursuing with the case. This petition is accordingly disposed off for want of prosecution. It is, however, open for the petitioner to approach this court in case of any difficulty.

5. Rule discharged. Interim relief granted stands vacated.

(K.A. PUJ, J.)

Divya//